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DEPT. OF TRANSPORTATION

STATE OF IOWA

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IOWA UTILITIES BOARD
IOWA DEPARTMENT OF COMMERCE

January 14, 2004
File: OPS

Dockets Facility
U.S. Department of Transportation
Room PL-401
400 Seventh St. SW
Washington, DC 20590-0001

RSPA-97-3001-6

RE: Docket No. RSPA-97-3001, – Pipeline Safety: Periodic Underwater Inspections

Dear USDOT/RSPA:

On December 12, 2003, the U.S. Department of Transportation, Research and Special Programs Administration (RSPA), published in the Federal Register a Notice of Proposed Rulemaking in the above-referenced docket. The proposed rule would amend the pipeline safety regulations to require operators of gas and hazardous liquids pipelines to have procedures for periodic inspection of pipeline facilities located in certain offshore areas or crossing under a navigable waterway.

The Iowa Utilities Board is the agency responsible for administering the pipeline safety programs of the State of Iowa, and for enforcement of the natural gas pipeline safety standards of 49 CFR Parts 192, 193 and 199 under certification granted by the U. S. Department of Transportation (DOT) pursuant to 49 U.S.C. 60105. The Board also acts as an Interstate Agent for interstate gas pipelines pursuant to 49 U.S.C. 60106. The Board therefore has an interest in this proceeding and respectfully offers the following comments.

The proposed rules use the term "navigable waterway," but do not define it. In the text of the notice, it states "Under this proposed rule, affected navigable waterways are those waterways with a substantial likelihood of commercial navigation." The notice further directs interested parties to the National Waterways Network database for information of which waterways are considered navigable. It appears, to our best knowledge, that the rivers shown on this map as navigable are those currently in use for commercial freight barges. Considering the apparent intent of these rules, this seems appropriate, as the size of vessels used in such waters could potentially damage an exposed or shallow pipeline. However, without a definition of "navigable waterway" in the rules, opportunity exists for uncertainty and dispute. It appears from the notice that RSPA does not intend for the definition of "Navigable waters of the United States" in 33 CFR 329.4 to apply because it

includes waterways that may have been historically, but are not at present, used for commercial navigation, yet it provides no alternative in the rule. In addition, Iowa law at Iowa Code Section 462A.2 contains the following definitions:

"Navigable waters" means all lakes, rivers, and streams, which can support a vessel capable of carrying one or more persons during a total of six months period in one out of every ten years.

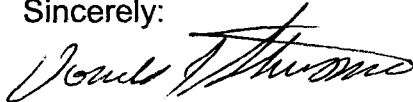
"Vessel for hire or commercial vessel" means a vessel for the use of which a fee of any nature is imposed, including vessels furnished as a part of lodge, hotel, or resort services.

These definitions also appear contrary to the intent of RSPA for application of the proposed rules. But absent a definition in RSPA's rules, persons seeking to discern how to apply the federal rules could look to other federal or state laws or regulations that are not consistent with RSPA's intent. Comments on this issue in this notice or in the preamble to a final rule could be informative but do not carry legal weight.

In conclusion, Iowa recommends the final rule include a definition of "navigable waterways" to prevent confusion that could arise from other federal or state definitions of this or similar terms.

Thank you for the opportunity to comment in this proceeding. If there are any questions or a need to contact me concerning these comments, feel free to do so at 515-281-5546 (phone), 515-281-5329 (fax), or at don.stursma@iub.state.ia.us.

Sincerely:

A handwritten signature in black ink, appearing to read "Donald J. Stursma", written over a horizontal line.

Donald J. Stursma, P.E.
Manager
Safety and Engineering Section